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CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE ARIZONA) DOCKET NO. E-01345A-01-0822
PUBLIC SERVICE COMPANY'S REQUEST)
FOR A VARIANCE OF CERTAIN) **REPLY OF THE ARIZONA TRANSMISSION**
REQUIREMENTS OF A.A.C. R14-2-1606) **DEPENDENT UTILITY GROUP TO ARIZONA**
) **PUBLIC SERVICE COMPANY'S**
) **OPPOSITION TO ITS APPLICATION TO**
) **INTERVENE**

The Arizona Transmission Dependent Utility Group ("ATDUG")¹, by
its undersigned counsel, herewith submits this Reply to the Opposition
of Arizona Public Service Company to ATDUG's Application to Intervene
in this proceeding. Additionally, ATDUG and its members ask for
expedited consideration of the Application because, at the procedural
conference held yesterday, APS committed to filing its testimony
within a week, the Hearing Officer directed that discovery could begin
immediately and the Hearing Officer directed APS to organize a "meet
and confer" meeting of parties to discuss legal issues and the process

¹ Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation &
Drainage District, Central Arizona Water Conservation District, Electrical District
No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No.
7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County
Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage
District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation
District, Wellton-Mohawk Irrigation and Drainage District.

1 for determining them and for setting a schedule for further
2 proceedings in this docket. Thus, time is of the essence.

3 Initially, we are struck by the fact that, alone among the legion
4 of applicants to intervene, we are singled out for vitriolic
5 opposition to our participation in this proceeding. We are especially
6 amazed because of our active participation in the Electric Competition
7 Rules docket establishing the very rule to which APS seeks a variance.

8 APS' opposition defeats itself. APS admits that competitors are
9 normally considered "directly and substantially affected" under the
10 applicable rule. A.A.C. R14-3-105. (APS Opposition, p.1, 1.25.) APS
11 admits that ATDUG members provide retail electric service (APS
12 Opposition, p.2, lines 3-7), and are APS' wholesale customers (Id.,
13 line 14). APS claims that, because of this competitor/customer
14 relationship, our participation in this proceeding will unduly broaden
15 the issues. However, APS doesn't say how we alone will accomplish
16 this feat. The entire discussion in their opposition is about the
17 fact that we have different relationships with APS than do many of the
18 other intervenors. That says nothing about the scope of the
19 proceeding. Indeed, it is the fact that we have these relationships
20 with APS and that APS is seeking to do business in a way that is
21 substantially different than the Electric Competition Rules provide
22 that defeats APS' claim that we are not directly and substantially
23 affected.

24 Moreover, APS admits that the procedural conference yesterday was
25 focused on just how broad this proceeding would get and what it really

1 meant for APS to ask for a variance from one of the Electric
2 Competition Rules when it had entered into a settlement agreement
3 based on those rules which is a separate Commission-approved contract
4 with multiple parties and multiple impacts. Indeed, since we
5 participated in the prehearing conference, we can testify ourselves to
6 the fact that virtually the entire conference was spent discussing
7 just how broad the proceeding was going to get. How we could somehow
8 "unduly broaden" that discussion is beyond us.

9 Moreover, as Commissioner Irvin observed, there are two markets
10 that have to be examined in the context of the APS application, the
11 wholesale market and the retail market. Most of the intervenors are
12 exempt wholesale generators ("EWG's") not subject to regulation by the
13 Commission nor the Federal Energy Regulatory Commission. They
14 uniformly voiced concerns about the health of the wholesale market in
15 Arizona if APS is allowed to enter into this "sweetheart" deal with
16 Pinnacle West Energy Corporation, one of its affiliates, on a "cost-
17 of-service" basis, in other words "cost-based rates", rather than
18 market rates. (APS Reply to Response of Commission Staff, p.2, lines
19 23-25, p.3, line 2.) Since APS admits that our members are wholesale
20 power customers of APS (APS Opposition, p.2, line 14), APS admits that
21 we will be affected by their "sweetheart" deal tying up a significant
22 wholesale resource that would otherwise be available for competitive
23 bidding. Clearly, such action will directly and substantially affect
24 the members of ATDUG. Moreover, since APS admits that we are retail
25 electric service providers, and therefore competitors, examination of

1 the impact of this variance request on the condition of the retail
2 market also directly and substantially affects ATDUG and its members.

3 It is true that we are not likely to sell wholesale electricity
4 to APS. Mice seldom sell grain to elephants. However, it is not true
5 that we are legally prohibited from doing so. Our members purchase
6 federal power resources, the contracts for which prevent wholesale
7 resale of those resources. But nothing in Arizona law prevents a
8 transaction with a resource that would not be so restricted and,
9 indeed, Arizona law contemplates that these districts would provide
10 surplus resources to others. In any event, the likelihood of our
11 selling power at wholesale to APS is hardly relevant to the issue of
12 the impact of the variance request on either the wholesale or retail
13 markets in Arizona. Clearly, however, those two seminal issues are
14 relevant to the inquiry about what APS has done in initiating this
15 proceeding and what the proper scope of the proceeding is.

16 APS complains that we hold federally-regulated wheeling contracts
17 with APS and somehow that prevents us from participating in this
18 proceeding. While it was not discussed at the prehearing conference
19 yesterday, one might wish to examine whether and to what extent
20 granting the requested variance adversely impacts the transmission
21 system available to the Phoenix load pocket or elsewhere in Arizona.

22 As APS correctly observes, we buy wholesale power in addition to
23 the power we purchase from the federal government. Thus, we are
24 likely to be customers of Pinnacle West Energy Corporation or other
25 exempt wholesale generators, such as most of the myriad of

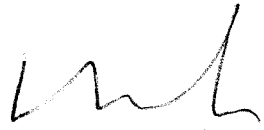
1 intervenors, if there is a robust competitive wholesale market. Since
2 that is one of the inquiries here and has to be, we are directly and
3 substantially affected in that regard as well.

4 APS seeks to artificially limit our participation because it
5 claims we have no direct or substantial connection to the relief that
6 it has requested. Nothing could be further from the truth. If that
7 were the standard, then none of the exempt wholesale generators would
8 have any business in this proceeding either.

9 Incredulously, APS says we can look in the window at this
10 proceeding to see whether it grows and if it does grow, we can ask to
11 come inside a second time. How disingenuous is that? It is obvious
12 that everyone already in this proceeding, from ACC staff to each and
13 every one of the other intervenors, believes that this proceeding is
14 much broader than APS attempts to confine it. The cat is out of the
15 bag. We should be allowed to pursue it along with the other non-
16 jurisdictional competitors and potential purchasers/sellers whose
17 interventions APS thinks are perfectly fine.

18 DATED this 6th day of December, 2001.

19
20 ARIZONA TRANSMISSION DEPENDENT
21 UTILITY GROUP

22
23 By 
24 Robert S. Lynch
25 Attorney for the Arizona
Utility Group and its members

1 Original and 10 copies of the
2 foregoing filed this 6th day
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